In the Supreme Court of Pennsylvania, June, 1857.

HENRY S. MOTT ET AL. CANAL COMMISSIONERS *vs.* THE PENNSYLVANIA RAILROAD COMPANY ET AL.

1. A State Legislature, in the absence of any express constitutional authority, has no power to sell, surrender, alienate, or abridge, any of the rights of sovereignty, such as the right of taxation, so as to bind future legislatures; and any contract to that effect is void.
2. So much of the Act of the Legislature of Pennsylvania, passed May 16, 1857, authorizing the sale of the Main Line of the Public Improvements of that State, as provides "that if the Pennsylvania Railroad Company shall become the purchaser," they shall pay in addition to the purchase money at which it (the Main Line) may be struck down, the sum of $1,500,000, in *consideration* whereof the said Railroad Company and the Harrisburg Railroad Company shall be discharged by the Commonwealth *forever*" from the payment of all tonnage taxes, and all other taxes whatever, "except for school, city, county, borough, and township purposes," declared unconstitutional and void: and an injunction granted to prevent the same from forming part of the terms of the sale.
3. The act in question provided that the sale should be made by the Governor; held that as this was not part of his official duty as the Executive of the State, but merely ministerial, the injunction might issue against him.
4. The holders of the State Loan, whether or not having a specified lien on the tolls of the Public Works, have no right to object to a sale thereof by the State.

The opinion of the court was delivered by

LEWIS, C. J.—Three bills in equity have been filed, in each of which a motion is made for an injunction to prevent the sale of the Main Line of the Public Improvements of the State, under the Act of Assembly of May 16, 1857. These motions draw into consideration the rights of the Canal Commissioners, of the State creditors, of the tax payers of the Commonwealth, and of the stockholders of the Pennsylvania Railroad Company, to interfere in the great question involved. On all the questions about to be decided, I proceed to deliver the unanimous opinion of the whole court.

Although there is some difference in our reasons for denying to a dissenting stockholder who is offered compensation for his stock by the terms of the act, the preliminary injunction asked, we all

agree in refusing his motion. His rights are to be determined on the final hearing.

We do not consider it necessary to express any opinion on the question whether the holder of a certificate of State loan has such a pledge of the tolls on the State canals and railroads as could be enforced in a court of justice. Conceding, for the purposes of the present motion, that he has such a pledge, we are nevertheless of the opinion that the right of a pledgee extends no further than to require a sale of the thing pledged, and an application of the proceeds to the payment of his claim. This is what the act of Assembly proposes to accomplish. It is what a court of equity would do, under the circumstances disclosed, if the controversy were between private individuals. But the Legislature has the right to prescribe *remedies* and change them at pleasure, so that the *rights* of the parties are not materially impaired. We are perfectly satisfied that the rights of the State creditors will not be impaired by a fair public sale of the Main Line to the highest and best bidder, and the application of the proceeds to the payment of the State debt. On the contrary, we are bound to presume, from the evidence before us, that such a proceeding will be highly beneficial to the creditors of the State. It will reduce the amount of the public debt, and render the residue more secure. We have no right to presume that the Works will be sold for less than their value. The creditor has therefore no case for relief on the footing of the pledge of the tolls on the Public Works.

But the Canal Commissioners, the tax payers and the creditor, object to a contract of sale under which the right to punish the purchasing corporation for misuse or abuse and the right to tax the Pennsylvania Railroad Company for State purposes and another company for tonnage is forever extinguished. It is alleged that the Legislature have no constitutional authority to bind succeeding Legislatures in these particulars. If such a contract be unconstitutional and void, the Canal Commissioners are in the line of their duty in suggesting this objection to the court, and if the court should hold the act of Assembly void, it would be the duty of the commissioners, as faithful agents of the State, entrusted with the custody

and management of the works, to retain possession of them for the use of the Commonwealth, regardless of the unauthorized attempts to deprive the public of their rights. If the Legislature have no right to release the means on which the State and her creditors must rely for the payment of her public debt, any creditor whose security is about to be thus impaired, has a right to be heard in opposition to the measure proposed. The tax-payers, whose burthens will be necessarily increased by releasing from taxation any portion of property liable to contribute to the payment of the public debt and the expenses of government, have also an interest in the question, and of course have a right to be heard.

A judgment of ouster against a corporation, duly put in execution, works its dissolution. According to the ancient common law, where there is no statute provision to the contrary, upon the civil death of a corporation all its real estate remaining unsold reverts back to the original grantors and their heirs. The debts due to and from the corporation are all extinguished. Neither stockholders nor the directors nor trustees can recover debts or be charged with them in their natural capacity. All the personal estate vests in the Commonwealth. 2 Kent's Com. 307; 1 Blacks. Com. 484. But under the modern rule of equity jurisprudence, the severity of the common law in this respect is greatly mitigated, and it is held that it is the *franchise*, and not the property of the corporation that is forfeited by a judgment of ouster, and that the property of the corporation is a trust fund for the payment of debts and distribution among stockholders. *Wood* vs. *Summer*, 3 Mason's Reports, 309; *Adair* vs. *Shaw*, 1 Sch. and Lefr. 261; *Mumma* vs. *The Potomac Company*, 8 Peters, 281; *Stainton* vs. *The Carron Company*, 23 L. & E. 315; *Travis* vs. *Milne*, 9 Hare, 141; *Bacon et al.* vs. *Robertson et al.*, 18 How. U. S. Rep. 480. The 15th section of the act of 16th May, 1857, enables the Legislature, at their election, after judgment of ouster, to revoke the privileges of the corporation, and to take the roads and canals for public use, giving full compensation to the stockholders. This provision does not vary very materially from the rule which equity would adopt, independent of the act of Assembly. It is no release of the punishment for misuse or

abuse. Nor is it a release of the eminent domain under which the corporation may be repealed, without either abuse or misuse, whenever the public interest requires it, on giving just compensation to the stockholders. The word "may," as applied to the action of the Legislature in this respect, is not to be construed as "shall" or "must." If the construction were doubtful, the doubt must be resolved in favor of the State. A corporation can never claim a privilege against the State without showing that it is clearly entitled to it by the terms of the charter. There is nothing in this section which binds the Legislature to make "full compensation to the stockholders." That is only to be done if the Legislature should, by legislative act, revoke the privileges granted; but there is no obligation, on their part to pass any act of revocation. If this should not be done, the judgment of ouster, with all its legal and equitable incidents, would remain in full force. There is, therefore, no release of the right to punish for misuse or abuse, nor any release of the eminent domain in the provisions contained in the 15th section of the act of Assembly.

We now come to the vital question involved in these applications. The act of Assembly of 16th May, 1857, makes provision for a public sale, and, for the purpose of inviting competition, directs that public notice of the time and place be given in one or more newspapers of extended circulation, published in the cities of Philadelphia, Pittsburg, Washington, Boston, New York and in the borough of Harrisburg. It authorizes "any person or persons, or railroad or canal company now incorporated, or which may hereafter be incorporated under the laws of this Commonwealth, to become the purchasers for any sum not less than seven million five hundred thousand dollars." But there is a *proviso* in the 3d section, which declares that "if the Pennsylvania Railroad Company shall become the purchasers at the said public sale or by assignment, they shall pay, in addition to the purchase money at which it may be struck down, the sum of one million five hundred thousand dollars, and, *in consideration thereof*, the said railroad company, and the Harrisburg, Mount Joy and Lancaster Railroad Company shall be discharged by the Commonwealth *forever*, from the payment of

all taxes upon tonnage or freight carried over said railroads, and the said Pennsylvania Railroad Company shall also be released from the payment of all other taxes or duties on its capital stock, bonds, dividends or property, except for school, city, county, borough, or township purposes." The amount of taxes proposed to be released is beyond calculation. It can only be conjectured. It would be greatly increased by the tax which would of course be levied on the property about to be sold to the company. Judging from the increase during the last five years, and the constant augmentation of commerce and travel along the route, it would seem reasonable to believe that in five years from this time it would be double its present amount. But conceding that the tax to be released will hereafter amount to no more, per annum, than the sum paid in 1856, the amount, according to the admission of the railroad company itself, would be $280,739 21 per annum forever. This sum is more than equal to the interest on $5,600,000 at 5 per cent., the rate to be charged to the purchasers. In other words, the act of Assembly proposes to give to the railroad company a consideration equal to $5,600,000 for $1,500,000, and thus to give that company an advantage equal to $4,100,000 over every other bidder at the sale. By means of this privilege, the Pennsylvania Railroad Company may drive from the field of competition all other bidders. It is essential to every fair public auction, that all the bidders shall stand upon an equal footing.

If the object had been to make a fair sale of this portion of the State revenue, it might have been evinced by a provision for the transfer of it to the highest bidder, without any distinction in favor of any one. But this was not done. The extraordinary *proviso* in favor of the Pennsylvania Railroad Company, is partial, and entirely repugnant to the general intent of the act, and if allowed to stand, the sale under it will furnish the most magnificent exhibition of a "*mock auction*" that the world has ever witnessed. We rejoice to say that the highly respectable and upright officers of the corporation disclaim, in the most solemn manner, under oath, all agency in procuring the enactment in question.

But has the Constitution conferred upon the Legislature the author-

ity to extinguish, *forever*, by bargain and sale, the power to raise revenue for the support of the government? All free governments are established by the people for their benefit, and the powers delegated are to be exercised for their common good, and not, under any circumstances, to be sold or destroyed, so long as the nations establishing them have the physical power to maintain their independence. Individuals cannot subsist without food. Deprive them of the "means whereby they live," and you destroy them as certainly as if you did it by shedding their blood. The necessities of governments are as great as those of individuals. No government can exist without revenues to defray its expenses and support its officers and agents. The revenue is the food indispensable to its existence. Deprive it of this and you strip it of all power to perform its duties, bring it into contempt by its helplessness and uselessness, and ultimately destroy it as effectually as if it were overturned by domestic violence, or subjugated by the conquest of a foreign foe. Government is but an aggregation of individual rights and powers. It has no more right to commit political suicide than an individual has to destroy the life given by his Creator. Contracting away the taxing power in perpetuity tends, as we have seen, inevitably to the destruction of the government. If twelve or twenty millions of taxable property may be released to-day, one hundred millions may be released to-morrow; and, the principle being established, the process might go on until all power to raise revenue was gone. If this did not destroy the government, it would result in something infinitely more dangerous to the liberties of the people. It would make it the servile dependent of the wealthy corporation or individuals to whom it contracted away its means of support. Although the taxing power is an incidental one, to be exercised only as the necessary means of performing governmental duties, it is nevertheless a branch of the legislative power, which always in its nature implies not only the power of making laws, but of altering and repealing them as the exigencies of the State and circumstances of the times may require. Rutherforth's Institutes of Natural Law, b. 3, ch. 3, s. 3. If one portion of the legislative power may be sold, another may be disposed of in the same way. If the power to raise revenue may be sold

to-day, the power to punish for crimes may be sold to-morrow, and the power to pass laws for the redress of civil rights may be sold the next day. If the legislative power may be sold, the executive and judicial powers may be put in the market with equal propriety. The result to which the principle must inevitably lead, proves that the sale of any portion of governmental power is utterly inconsistent with the nature of our free institutions, and totally at variance with the object and general provisions of the constitution of the State. It may be urged that we must confide in the fidelity of the Legislature, and that there is every ground for hope that they would not carry such measures to an unreasonable length. This is no answer to the argument. It is a question of constitutional authority and not a case of confidence at all. Limitations of power established by written constitutions have their origin in a distrust of the infirmity of man. That distrust is fully justified by the history of the rise and fall of nations.

But, conceding that this practice will not be carried so far as to distroy the government, is there any warrant for it to the extent to which the act of Assembly proposes to go in the present case? It was held by this court, in Hood's Estate, 9 Harris, 114, that "the duties of sovereign and subject are reciprocal, and the person who is protected by a government in his person or property, may be compelled to pay for that protection. As taxes are to be assessed for the sole purpose of supporting the government, the propriety of exacting them, the persons and property to be made liable, and the rules for their assessment and collection are to be determined by its authority. It is, however, a rule of the public law, founded on a principle of justice which no government can disregard without violating the rights of its citizens, that taxes shall be assessed in such manner that all the citizens may pay their quota, in proportion to their abilities and the advantages they derive from the society." 9 Harris, 114; 10 Harris, 497. This principle is sanctioned by writers of the highest authority—Vattel, b. 1, ch. 20, s. 240; Rutherforth's Inst. of Nat. Law, b. 2, ch. 3, s. 5; Puffendorf's Law of Nations, b. 7, ch. 9, s. 10. It is expressly declared by Baron Puffendorf, that "no immunities or exceptions," (from taxation) ought

to be "granted to certain persons to the defrauding or oppressing of the rest." It is upon this principle that, when the private property of the citizen is taken for public use, just compensation is to be made to him *out of the common fund*, in order that the contribution to the public interest may fall in a just proportion upon each citizen. Rutherforth, b. 2, ch. 3, s. 5. As the Legislature are necessarily the judges of the method of assessing taxes, it is to be presumed that they have regarded the rule of contribution sanctioned by justice and the equal rights of the citizen; and their enactments are not always subject to judicial review. Where they make appropriations to institutions of learning or charity, or grant lands or pensions to persons who have served in the defence of the nation, it is presumed to be a compensation for the good that has been done or is to be done to the community. Where they grant to the same institutions or individuals an exemption from taxation, such grants, for the same reason, are not regarded as a violation of the rules of justice and equality, so long as there is no *contract* which may tie the hands of succeeding legislatures against repealing such exemptions; and so long as they are not repealed, they seem to have been enforced as a legitimate exercise of legislative power. 1 S. & R. 62; 6 Watts, 435.

But where there is no pretence of an intention to equalize the taxation among the people, but an avowed purpose to sell to one class of citizens an exemption from all taxes forever, and thus to throw all the public burthens upon the other, for all time to come, it is, to all intents and purposes, imposing a tax upon them without the consent of their representatives, and is such a plain, palpable and open violation of the rights and liberties of the people—such a clear case of transcending the just limits of legislative power, that the judiciary is bound to pronounce such an act null and void.

No class of corporations stand more in need of the protection of the government, or occupy more of the time of the Legislature and the courts of justice, or occasion more expense to the public than railroad corporations. From the extensive nature of their operations, from the exercise of the power to take private property for the construction of their works, and their continual collision with

each other's interests, and with the interests of individuals and municipal communities, they require the constant and the energetic protection of the strong arm of the government. Withdraw that protection and they would be left to the mercy of popular outbreaks, manifesting themselves by opposition to their progress and the destruction of their works whenever the location of their roads or their depots, or any of their numerous and necessary operations come in conflict with the interests of particular localties. These corporations should be the last to consent that the government should be enfeebled by the diminution of its revenue, or to ask that it should be bound to exert all its energies, and incur large and constant expenditures for their protection, while they are exempt from contributing their share.

These principles are not so infirm as to stand in need of the staff of authority for support. They are the result of that liberty and equality which was established by the revolutionary struggle of our ancestors. They are perfectly understood by every one who has capacity to comprehend the nature of our free institutions. They are deeply impressed on the hearts of the people, and they are fully recognized by the history, the objects and the language of our State constitution.

The case of *New Jersey* vs. *Wilson*, 7 Cranch, 164, is cited in opposition to this doctrine. It was decided without argument on the part of the State. It has relation altogether to the power of the colonial government, by treaty with the remnant of a tribe of Indians, who released lands claimed by them, in consideration of the grant of other lands free from taxation. The Indians occupied in some respects the condition of a separate nation. Nations are frequently obliged, for the sake of the public peace, to make concessions to each other, which would not be justified if the transaction were between a State and individuals; and the rules which govern in the construction of the treaty making power, do not apply to ordinary contracts. But it is a sufficient answer to this case to say, that the powers of the colonial government of New Jersey, before our free governments were established by the Revolution of 1776, furnish no rule whatever for ascertaining the powers of the Legisture of Pennsylvania, under our present constitution.

In the case of *Gordon* vs. *The Appeal Tax Court*, 3 How. 142, it was "admitted by the attorney-general of the State of Maryland, that there was a contract between that State and the Banks, and that it was protected" by the Supreme Court of the United States. The question of the constitutional power of the Legislature to contract away the taxing power was therefore neither raised nor decided. If it had been, the question would have had relation to the powers conferred by the constitution of Maryland, and not to those delegated by that of Pennsylvania.

The case of *Hardy* vs. *Waltham*, 7 Pick. 110, was that of an exemption granted by the old colonial ordinance of Massachusetts of 1650, and subsequently confirmed by the people in their State constitution. A decision affirming the power of the people, when establishing their constitution, to confirm an exemption from taxation granted to a college by an ancient colonial law, has nothing whatever to do with the question involved in this case. That the people themselves possess this power has never been doubted. All power emanates from them. But it is denied that they have in this State granted any such power to the Legislature.

In *Atwater* vs. *Woodbridge*, 6 Conn. Rep, 223, and in *Seymour* vs. *Hartford*, 21 Conn. Rep. 481, the question of the right of the Legislature to contract away the taxing power so as to bind future Legislatures, did not arise, because the subsequent enactments were not construed or understood as a repeal of the exemptions previously granted. The intimations of the judge in delivering the opinion in the last mentioned case, that such a power had been judicially sanctioned, go for little, particularly when we see that he deplores the exercise of such a "high act of legislative power," and declares the intention of the court "not further to extend this exemption from taxation." The progress of the age and the experience of government enable it to see and correct the errors committed during its youth and inexperience.

In *Brewster* vs. *Hough*, 10 New Hampshire Rep. 138, it was held that "the power of taxation is essentially a power of sovereignty or eminent domain;" and Chief Justice Parker, in delivering the opinion of the court, questions the power of the Legislature

to make a contract by which it shall be surrendered without express authority for that purpose in the constitution. He held that there is "a material difference between the right of a Legislature to grant lands, or corporate powers, or money, and a right to grant away *the essential attributes of sovereignty.* These," he adds, "do not seem to furnish the subject matter of a contract." In these views we fully concur. The attribution of power by the States to the Union is not in conflict with this principle, for the act of Union is but an enlargement of the political society for certain described purposes, and the power of taxation that passed to the federal government was but a natural and necessary sequence of it. It was not extinguished by contract, but merely transferred to another portion of government to be *exercised* for the general welfare under the limitations prescribed.

In general, the State courts have avoided expressing an opinion on this momentous question, where the necessities of the case did not require it. The cases, which have arisen, have generally been disposed of by holding that "exemptions are binding until repealed by subsequent legislation"—that "no charter or grant carries with it such exemption unless clearly expressed"—that "the taxing power is of vital importance and is essential to the existence of government"—that it is "a part of the power of legislation"—that "it resides in a government as part of itself," and that "the release of it is never to be assumed." Most of these principles are announced by Chief Justice Marshall, in the *Providence Bank* vs. *Billings*, 4 Pet. 561, 562, 563, and recognized by many decisions in this and other States. 10 Barr, 442; 12 Harris, 232; 10 Harris, 496. But the question has been distinctly decided against the existence of any such power five different times by the unanimous judgment of all the judges of the Supreme Court of Ohio. *Debolt* vs. *The Ohio Life Insurance and Trust Company*, 1 Ohio State Reports, 563; *The Toledo Bank* vs. *The City of Toledo*, Ibid, 623; *Mechanics' and Traders' Branch Bank* vs. *Debolt*, Ibid, 591; *The Milan and Rutland Plank Road Company* vs. *Husted*, 3 Ohio State Reports, 578; *The Norwalk Plank Road Company* vs. *Husted*, 3 Ohio State Reports, 586. In one of these cases, it was de-

clared that the Legislature had not the constitutional authority to abridge or in any manner whatever surrender any portion of the right of taxation, and that this question had been settled by solemn adjudication, and is not now an open question in that State. 3 Ohio State Rep. 581. It is true that the Supreme Court of the United States has taken a different view of the question, and has in several cases, reversed the decisions of the Supreme Court of Ohio. *Piqua Bank* vs. *Knoop*, 16 How. 369; *Mechanics' and Traders' Bank* vs. *Debolt*, 18 How. 380; *Same* vs. *Thomas*, Ibid, 384; *Dodge* vs. *Woolsey*, Ibid, 331.

The decisions of the Supreme Court of the United States, on the construction of the constitution or laws of the United States, are binding on the State courts. The decisions of the Supreme Courts of the several States, on the construction of the constitution and laws of their respective States, are in like manner binding on the Supreme Court of the United States. That court has no more right to overrule the judgment of a State court on a question of State law, than the State court has to overrule the United States court on a question of United States law. All contracts are to be construed and understood according to the law of the place where they are made and to be performed. The laws and constitution of a State are to be construed and understood everywhere according to the judicial construction which they receive in the State where they are made and are to operate. This is the rule of jurisprudence which prevails throughout the civilized world. It is the rule which always ought to govern, and which generally does govern the Supreme Court of the United States. Wherever there is a departure from it, the necessary result is to impair public confidence in that exalted tribunal and to introduce disastrous confusion into the administration of the law. It cannot be expected that the judges of the federal court shall be as familiar with the constitution, laws and usages of Ohio, as the Supreme Judges of that State, who reside within her limits—who have been chosen on account of their acquaintance with her laws, and whose especial business it is to expound them. The decision of the highest judicial tribunal in a State, on the construction of the State constitution, or a State law, is authoritative

everywhere, when the same question arises, because it is pronounced by the only tribunal having direct and immediate jurisdiction over the question. The decision of the United States court on the same point, where it incidentally arises, is not authority elsewhere, because it has no direct and immediate jurisdiction over the question. Its duty is to receive the State law as it is expounded in the tribunal of the last resort in the State. These views furnish a plain rule for estimating the value of the conflicting decisions which have been cited. We have no hesitation in adopting the decisions of the State courts on all questions respecting the meaning of their own State constitutions, and the extent of the powers which the people of the States have therein granted to the different departments of their own State governments. It may be added that the United States court was divided in opinion on this question. Three eminent judges of that court dissenting, while the State court was unanimous. And it is but just to say that the opinions of the State court are sustained by a course of argument which has never been satisfactorily answered in the United States courts, or elsewhere.

Chief Justice Taney, in maintaining the opinion of the United States Court, admits that that court "*always* follows the decisions of the State courts in the construction of their own constitution and laws;" but he adds that, "where those decisions are in conflict, the United States Court must decide between them;" and he then puts the decision on the ground that the alleged contract was made "under a construction in favor of its validity, which had been undisputed for nearly fifty years by every department of the government, and supported by *judicial* construction." 16 How. 431. If these were the facts of the case, we find no fault with the decision, except that the *State* court, and not the *federal* court, was the proper tribunal to pronounce it. We have no sympathies with States or individuals who desire to break engagements entered into with their agents, on the ground that the latter have transcended their authority, after the principals, by acquiescence and encouragement, have induced unsuspecting parties to enter into such engagements, and invest their money on the faith of them. Common justice requires every principal to disavow the act of an agent who exceeds

his authority, the moment it is known. But, in the case now before us, there has been neither encouragement nor acquiescence. The unauthorized act was openly and promptly disavowed and opposed, in the mode pointed out by the constitution and the laws, the moment that an attempt was made to give it the *form* of a contract.

It is objected that the governor is not subject to this form of our jurisdiction. It is far from our intention to claim the power to control him in any matter resting in executive discretion. But the rule of law seems to be, that when the Legislature proceeds to impose on an officer duties which are purely ministerial, he may be coerced by mandamus or restrained by injunction, as the rights of the parties interested may require. In such a case, no individual in the land, however high in power, can claim to be above the law. This rule is sustained by the case of *Marbury* vs. *Madison*, 1 Cranch, 137; *Griffith* vs. *Cochran*, 5 Bin. Rep. 87; *Commonwealth* vs. *Cochran*, 6 Bin. 456; *Commonwealth* vs. *Cochran*, 1 S. & R. 473. It seems to us that the sale of the property of the State at auction is not a part of the governor's constitutional duty as chief magistrate. It is very probable that the Legislature have no power to impose any such duty upon him. But if he consents to perform a ministerial act, the judicial power to administer justice and restrain against acts contrary to law, cannot thereby be ousted or evaded. And if it be shown that the act under which he claims authority to dispose of the public property, or to divest private rights, is unconstitutional and void, he may, of course, like any other individual, be restrained from proceeding. But we have too much respect for the office to resort to this measure unnecessarily, and quite too much respect for the incumbent to suppose that any such proceeding will be necessary after the opinion of the court is pronounced.

There is no constitutional objection to the repeal of the tonnage tax, or any other tax, whenever the Legislature, in the exercise of their discretion, shall think proper to pass such a law. The objection is to the sale of the taxing power in such a way as to put the resources of the State out of the reach of future Legislatures, should the public necessities require a resort to them.

There is no legal objection to the sale of the Main Line, nor to

the right of the Pennsylvania Railroad Company to become a competitor and purchaser, upon equal terms with any other person or corporation. The objection is to that part of the proviso in the third section of the act of 16th May, 1857, which requires the Pennsylvania Railroad Company to bid $1,500,000 more than any other bidder, and in consideration thereof proposes to release the said company, and also the Harrisburg, Mount Joy and Lancaster Railroad Company forever, from the taxes therein stated. The injunction is to be awarded merely to prohibit a sale of the Public Works upon these terms. All other parts of the act are constitutional, and there is nothing to prevent a sale to the Pennsylvania Railroad Company, or any other corporation or person or persons, under the GENERAL provisions of the act.

ORDER.

It is ordered that, upon the complainants, or either of them, filing a bond in the penal sum of one thousand dollars, with sufficient sureties, to be approved by this court, or any judge thereof, conditioned to indemnify the defendants from all damages that may be sustained by the injunction granted on this motion, an injunction be awarded, commanding the Pennsylvania Railroad Company, and its officers and agents, named as defendants in this bill, to make no bid for the purchase of the Main Line of the Public Works under that part of the proviso in the third section of the act of 16th May, 1857, which requires the said company to pay, in addition to the purchase money at which the works may be struck down, the sum of one and a half millions of dollars, and in consideration thereof assumes to discharge forever the said railroad company, and also the Harrisburg, Portsmouth, Mount Joy and Lancaster Railroad Company from the payment of all taxes upon tonnage and freight over said railroads; and also to release the said Pennsylvania Railroad Company from the payment of all other taxes or duties on its capital stock, bonds, dividends or property, except for school, city, county, borough or township purposes. And also commanding the said Pennsylvania Railroad Company, and its officers and agents aforesaid, strictly to abstain from accepting any assignment on the

terms stated in the aforesaid part of the said proviso, or executing or delivering to the Treasurer of the State any bonds of the said company, for any greater amount than the sum at which the Main Line of the said Public Works may be struck down at a public sale, on a fair and equal competition with all other bidders.

And also commanding the said Pennsylvania Railroad Company, and its officers and agents aforesaid, strictly to abstain from accepting any transfer of the said Main Line of the said Public Works from the Secretary of the Commonwealth, under the great seal of the State, founded upon or in consideration of any purchase upon the terms herein prohibited. And also commanding Henry S. Magraw, the Treasurer of the State, strictly to abstain from accepting the delivery of any bonds executed by the said Pennsylvania Railroad Company upon the terms herein prohibited, or for any greater amount than the sum at which the said Main Line of the Public Works may be struck down at a fair public sale of the same, upon equal terms to all persons and corporations desiring to purchase. And also commanding Andrew G. Curtin, Secretary of the Commonwealth, strictly to abstain from making any transfer of the said Public Works, under the great seal of the State, upon the terms herein prohibited, or for any greater amount than the sum at which the said works may be struck down at a fair public sale as aforesaid.

This injunction to remain in force until hearing, or the further order of this court.

NOTICES OF NEW BOOKS.

A Book of Forms, containing more than two thousand Forms for Practice in the Courts of Pennsylvania, and of the United States, and for Conveyancing; also, for the use of Public Officers and men of business generally; adapted to the recent Acts of Assembly of Pennsylvania; with Explanatory Remarks, and numerous Precedents and References to standard authorities. To which are appended a Glossary of Law terms, and a copious Index. By James D. Dunlap, Counsellor at Law, etc. Fourth revised edition. Philadelphia: Kay & Brother, 19 S. Sixth street, Law Booksellers, Publishers and Importers, 1857. pp. 969.

The learned author tells us, in his preface, that the "extensive sale of this work, and the changes in the Acts of Assembly, have necessarily caused the editor to increase the editions more rapidly than designed. Its